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Preparatory Commission for the International Criminal Court

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Preparatory Commission for the International Criminal Court
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Proceedings of the Preparatory Commission at its first, second and third sessions (16-26 February, 26 July-13 August and 29 November-17 December 1999)

Draft summary

Rapporteur: Mr. Salah **Suheimat** (Jordan)

1. The Preparatory Commission for the International Criminal Court, established in accordance with resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, met at United Nations Headquarters from 16 to 26 February, 26 July to 13 August and 29 November to 17 December 1999 in accordance with General Assembly resolution 53/105 of 8 December 1998 to carry out the mandate under that resolution and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.

2. Under paragraph 2 of resolution F of the Conference, the Preparatory Commission shall consist of representatives of States which have signed the Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court and other States which have been invited to participate in the Conference.

3. In accordance with paragraph 6 of resolution 53/105, the Secretary-General invited, as observers to the Preparatory Commission, representatives of organizations and other entities that have received a standing invitation from the General Assembly, pursuant to its relevant resolutions, to participate in the capacity of observers in its sessions and work, and also invited as observers to the Commission representatives of interested regional intergovernmental organizations and other interested international bodies, including the international tribunals for the former Yugoslavia and Rwanda.

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4. Under paragraph 7 of the same resolution, non-governmental organizations may participate in the work of the Preparatory Commission by attending its plenary and its other open meetings, in accordance with the rules of procedure to be adopted by the Commission, receiving copies of the official documents and making available their materials to delegates.

5. The session was opened by the Secretary-General of the United Nations, Mr. Kofi Annan, and by the Under-Secretary-General, the Legal Counsel, Mr. Hans Corell, both of whom made statements.

6. At its 1st and 2nd meetings, on 16 and 22 February 1999, the Preparatory Commission elected its Bureau, as follows:

Chairman: Mr. Philippe Kirsch (Canada)

Vice-Chairmen: Mr. George Winston McKenzie (Trinidad and Tobago)
Mr. Medard R. Rwelamira (South Africa)
Mr. Muhamed Sacirbey (Bosnia and Herzegovina)

Rapporteur: Mr. Salah Suheimat (Jordan)

7. Mr. Václav Mikulka, Director of the Codification Division of the Office of Legal Affairs, Acted as Secretary of the Preparatory Commission. Mr. Manuel Rama-Montaldo, Deputy Director of the Codification Division, acted as Deputy Secretary of the Commission and Secretary of the Working Groups on Rules of Procedure and Evidence. Ms. Mahnoush H. Arsanjani, Senior Legal Officer, acted as Secretary of the Working Group on Elements of Crimes. The following members of the Codification Division also provided substantive servicing to the Commission: Ms. Christianne Bourloyannis-Vrailas, Mr. George Korontzis, Mr. Renan Villacis and Mr. Arnold Pronto.

8. At its 1st meeting, on 16 February 1999, the Preparatory Commission adopted the following agenda (PCNICC/1999/L.1):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Implementation of resolution F of the Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, adopted on 17 July 1998, and paragraph 4 of General Assembly resolution 53/105 of 8 December 1998.
6. Adoption of the report.

9. Also at its 1st meeting, the Preparatory Commission agreed that its rules of procedure were the rules of procedure of the General Assembly as applied to the Main Committees together with paragraphs 6 and 7 of General Assembly resolution 53/105.

10. Taking account of the priorities set forth by resolution F of the Conference, the Preparatory Commission agreed on a work plan focusing on two essential instruments necessary for the functioning of the Court: the Rules of Procedure and Evidence, and the Elements of Crimes.

11. In order to facilitate the tasks of the Preparatory Commission, the Chairman, in consultation with the Bureau, designated the following coordinators:

- Mr. Herman von Hebel (Netherlands) for the Elements of Crimes;

- Ms. Silvia Fernandez de Gurmendi (Argentina) for the Rules of Procedure and Evidence;
- Mr. Medard R. Rwelamira (South Africa) for the Rules of Procedure and Evidence relating to Part 4 (Composition and Administration of the Court) of the Statute;
- Mr. Rolf Fife (Norway) for the Rules of Procedure and Evidence relating to Part 7 (Penalties) of the Statute;
- Mr. Phakiso Mochochoko (Lesotho) for the Rules of Procedure and Evidence relating to Part 9 (International Cooperation and Judicial Assistance) and Part 10 (Enforcement) of the Statute;

12. Taking account of the remaining tasks of the Preparatory Commission listed in resolution F of the Conference, at the first session, the Chairman, in consultation with the Bureau, asked Mr. Tuvako Manongi (United Republic of Tanzania) to serve as coordinator for the crime of aggression. In addition, the Chairman designated Mr. Hiroshi Kawamura (Japan) as the contact point in respect of the draft texts of financial regulations and rules, a budget for the first financial year and the rules of procedure of the Assembly of States Parties; and Mr. Cristian Maquiera (Chile) as the contact point for the draft texts of a relationship agreement between the Court and the United Nations, basic principles governing a headquarters agreement to be negotiated between the Court and the host country, a draft agreement on the privileges and immunities of the Court, and the request contained in paragraph 4 of General Assembly resolution 53/105.

13. At its 3rd meeting, on 26 February 1999, the Preparatory Commission took note of the oral reports of the coordinators for the Elements of Crimes and for the Rules of Procedure and Evidence with respect to the work accomplished at the first session. At the same meeting, for ease of reference of delegations, the Preparatory Commission requested the Secretariat to prepare a document on the basis of the oral reports of the coordinators and to annex it to the proceedings of the Preparatory Commission at its first session.[1]

14. At its second session, the Preparatory Commission proceeded with its work on the basis of its agenda (PCNICC/1999/L.1), adopted on 16 February 1999.

15. The Preparatory Commission also undertook a number of informal consultations with respect to the crime of aggression.

16. At its 7th meeting, on 9 August 1999, the Preparatory Commission agreed on the following arrangements concerning the question of the crime of aggression:

(a) A working group on the crime of aggression would be established at the outset of the next session of the Preparatory Commission;

(b) At the next and the following sessions of the Preparatory Commission, the plenary traditionally held each Monday morning would be maintained, but would be significantly shorter, essentially limited to brief reports by the coordinators;

(c) A meeting of the Working Group on the Crime of Aggression would follow each of the Monday morning plenary meetings, until the end of the morning;

(d) Informal consultations on the crime of aggression would be conducted at other times where possible and appropriate, it being understood that this should be without prejudice to the requirements of the work on subjects which must be completed by 30 June

[1] PCNICC/1999/L.3/Rev.1.

2000. Within the limits of what was practicable, the Secretariat would endeavour to provide the best possible facilities for those informal consultations;

(e) The above arrangements were based on a clear and general understanding that they would remain unchanged until 30 June 2000, and that no additional requests concerning organization of the work with respect to the crime of aggression would be made before that date.

17. At its 5th meeting, on 30 July 1999, the Preparatory Commission was addressed by Judge Gabrielle Kirk McDonald, President of the International Tribunal for the Former Yugoslavia.

18. At its 8th meeting, on 13 August 1999, the Preparatory Commission took note of the oral reports of the coordinators for the Rules of Procedure and Evidence related to Part 4 and to Parts 5, 6 and 8 of the Rome Statute and of the coordinator for Elements of Crimes on the work accomplished at the second session. At the same meeting, for ease of reference of delegations, the Commission requested the Secretariat to prepare a document on the basis of the oral reports of the coordinators and to annex it to the proceedings of the second session.[2]

19. At its third session, the Preparatory Commission proceeded with its work on the basis of its agenda (PCNICC/1999/L.1), adopted on 16 February 1999.

20. At its 12th meeting, on 17 December 1999, the Preparatory Commission took note of the oral report of the coordinators for Elements of Crimes and for the Rules of Procedure and Evidence for Parts 2, 4, 6, 7, 8, 9 and 10 of the Statute and of the coordinator for the Crime of Aggression. At the same meetings, the Commission noted that it had completed a first reading of the Elements of Crimes and the Rules of Procedure and Evidence.

21. At the same meeting, the Preparatory Commission took note that the General Assembly by its resolution 54/105 of 9 December 1999 had renewed the mandate of the Commission and in accordance with paragraph 3 of that resolution the Secretary-General was requested to convene the Commission from 13 to 31 March, 12 to 30 June and 27 November to 8 December 2000.

22. In order to facilitate the task of the Preparatory Commission at its next sessions, the Commission requested the Secretariat to prepare an organized and consolidated text of the Elements of Crimes and of the Rules of Procedure and Evidence on the basis of the proceedings of the first, second and third sessions of the Commission.

23. The Preparatory Commission took note of the Intergovernmental Regional Caribbean Conference for the signature and ratification of the Statute of the International Criminal Court hosted by the Ministry of the Attorney General of Trinidad and Tobago and the No Peace Without Justice Foundation, in Port-of-Spain from 15 to 17 March 1999, as well as the Port-of-Spain Declaration resulting therefrom; the international seminar on victims' access to the International Criminal Court hosted by the Government of France in Paris from 27 to 29 April 1999; the informal inter-sessional meeting hosted by the International Institute of Higher Studies in Criminal Sciences in Siracusa, Italy, from 21 to 27 June 1999; and the two briefing sessions on ratification and implementation legislation of the Rome Statute, hosted by the International Human Rights Law Institute of DePaul University and Parliamentarians for Global Action on 31 July and 7 August 1999 at United Nations Headquarters in New York.

[2] PCNICC/1999/L.4/Rev.1.

24. The Preparatory Commission also noted with satisfaction that, during its first, second and third session, a total of 52 delegates had made use of the trust fund which, pursuant to paragraph 8 of General Assembly resolution 53/105, had been established to facilitate the participation of the least developed countries in the work of the Commission. The International Human Rights Law Institute of DePaul University provided accommodation for those delegates that attended the second session.